IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Crl.Rev.Pet.No. 4331 of 2006(B)

AGAINST THE ORDER IN CMP 624/06 IN
CC.72/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT,
PARAPPANANGADI

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REVN. PETITIONER: ACCUSED

THARI ALAVIKUTTY,
S/O.BEERANKUTTY, SOUTH VILLA-48,
ULLATTUPARAMBU, V.K.PADI,
A.R.NAGAR VILLAGE, THIROORANGADI TALUK.

BY ADV. SRI.T.V.GEORGE
SMT.LINDA GEORGE

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA,
REP. BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. MOIDEEN KOYA,
S/O.SEYED ALAVI HAJI,
MANGADANCHERRY HOUSE, THRIKKULAM,
CHEMMANDU, THIROORANGADI VILLAGE,
THIROORANGADI TALUK.

BY ADV. SRI.K.P.SUDHEER
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 4331 OF 2006 B

Dated this the 31st day of July, 2007

O R D E R

The revision petitioner challenges the order dated 26.7.2006 passed by the JFCM-I, Parappanangadi in C.C.No.72/01 as per which the revision petitioner has been arrayed as an accused in the said case which was originally registered as crime No.105/2000 of Tirurangadi Police Station for offences punishable under sections 143, 147, 148, 341 and 323 read with section 149 IPC. There is also a counter case arising from the same occurrence registered as crime No.104/00 under sections 143, 147, 148, 452, 341, 323 and 506(i) read with section 149 IPC. The said case has been taken on file as C.C.No.71/01 by the JFCM, Parappanangadi. In C.C.No.72/01 arising from crime No.105/00 referred to above originally there were three accused persons. In the First Information Statement given by CW1, it was alleged that all the four accused persons including the revision petitioner had committed the offences. The investigation proceeded as such under the Assistant Sub Inspector of police. While so, the revision petitioner preferred a representation before the Dy.S.P., Tirurangadi to the effect that the investigation was not just or impartial. Thereupon, the investigation was entrusted with the Circle Inspector of police,

Tirurangadi, who submitted a final report on 31.10.2000 as per which accused Nos.2 to 4 in the F.I.R. alone were charge sheeted and the revision petitioner's name was deleted from the array of accused. When the trial of C.C.No.72/01 started, CW1 was examined as PW1. During the chief examination, PW1 deposed before court that the revision petitioner had also indulged in beating him. Thereupon, the de facto complainant filed CMP No.624/06 requesting the Magistrate to invoke the power under section 319 Cr.P.C. to array the revision petitioner as an accused in the case. As per the impugned order dated 26.7.06, the learned Magistrate arrayed the revision petitioner also as an accused in C.C.No.72/01. It is the said order which is assailed in this revision.

2. Advocate Sri.T.V.George, learned counsel appearing for the revision petitioner, made the following submissions before me in support of the revision:-

A person, who is not charge sheeted by police and who is, therefore, not an accused shall not ordinarily be summoned by the court by invoking the power under section 319 Cr.P.C. [***Michael Machado and another Vs. Central Bureau of Investigation and another*** (JT 2000 (2) SC 531)]. Power to summon a person as an accused is an extraordinary power which should not be invoked merely from the presence of such person [***Krishnappa Vs. State of Karnataka (***2004 (3) KLT 460 SC)]. The Magistrate cannot add the accused after

conducting a local inspection at the stage of 209 Cr.P.C. [***In re Sr. Abhaya's case (***2006 (2) KLJ 641)]. The arraignment of the revision petitioner as an accused beyond the period of limitation was not permissible.

3. I am afraid that I cannot agree with the above submissions. Specific overt act has been attributed to the revision petitioner even in the First Information Statement. It was at the intervention of the revision petitioner in the investigation conducted by the Assistant Sub Inspector that the Circle Inspector, Tirurangadi came to be entrusted with the investigation and it was his investigation which culminated in the deletion of the revision petitioner from the array of the accused. No doubt, it was relying on the chief examination of CW1 that court below arrayed the revision petitioner as an accused by invoking his power under section 319 Cr.P.C. The decisions reported in ***Rakesh Vs. State of Haryana*** [2001 (3) KLT 70 SC] and ***Soyi Vs. State of Kerala*** [2006 (1) KLT 32] would go to show that it is permissible to array a person as an accused under section 319 Cr.P.C. even by placing reliance on the examination in chief of a prosecution witness. Similarly, having regard to the decision of the Delhi High Court in ***Mrs.Maninder Kaur Vs. State and others*** [2000 Crl.L.J. 3111], there is no legal impediment in the court arraying a person as an accused under section 319 Cr.P.C. ignoring the bar of limitation. This is because by virtue of section 319

(4) clause (b) Cr.P.C. there is a legal fiction as per which such person arrayed under section 319 will be deemed to have been an accused when the court initially took cognizance of the offence.

4. It is too early to accept the contention on behalf of the revision petitioner that the statement of PW1 before court attributing over tacts to the revision petitioner cannot be accepted. That is the matter within the realm of appreciation of evidence and if the court after denovo proceedings so far as the added person is concerned, comes to the conclusion that there is no acceptable evidence against him, the newly added person can very well take advantage of the same. I see no ground to interfere with the order passed by the court below.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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